Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 02-6

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Comments on the Notice of Proposed Rule Making and Order, Adopted January 16, 2002

The School District of Philadelphia ("school district" or "district") appreciates this opportunity to submit comments to the Federal Communications Commission (the "Commission") concerning the questions it has raised about various aspects of the E-rate program. The school district strongly supports the E-rate program because it has enabled the district to bring Internet connectivity to individual classrooms instead of merely to school buildings. The district continues to rely on the program to help it maintain its network, to respond to the growing demands that have been placed on that network, and to complete the job of bringing Internet access to every classroom in every corner of the district.

The Commission has raised a number of important issues in its Notice of Proposed Rule-making ("the NPRM") and we suspect that parties submitting comments will raise even more. However, we feel so strongly about one particular issue that we will focus our comments on that single issue: improving the ability of E-rate applicants to oversee what their vendors submit to the Universal Service Administrative Company ("USAC") for payment.

Discussion

The Commission asks for comments "on whether to adopt additional measures to reduce potential waste, fraud and abuse in the schools and libraries support mechanism." Separately, the Commission seeks ways "to minimize administrative costs while achieving the goals of the statute in the most effective manner possible."

We believe that the potential for fraud and abuse in the E-rate program could be dramatically reduced with a simple change that should be easy to implement: requiring the signature of the applicant on the Form 474, the Service Provider Invoice Form, *before* USAC disburses payments to the vendor. This would be a low-cost, low-burden approach that would position applicants and vendors as equal—and appropriate—checks on the activities of one another.

Under current rules, E-rate applicants are supposed to notify the Schools and Libraries Division that their services have started by filing a Form 486, the "Schools and Libraries Universal Service Receipt of Service Confirmation Form." Service providers are then expected to begin discounting their bills to applicants and to file the Form 474, the "Service Provider Invoice Form," to receive their discount payments from USAC. In cases where an applicant has already paid its bills, the applicant can file the "Billed Entity Applicant Reimbursement" (or "BEAR") form to be reimbursed for the payments it has already made. But for many low-income school districts that would not be able to pay the full cost of a project, that is not an option.

Because of the new requirements of the Children's Internet Protection Act, applicants are now required to file the Form 486 on a timely basis after their projects start. However, once that form is filed, the service provider is free to file the Form 474 for the full cost of the project—with no questions asked. In the case of the School District of Philadelphia, a vendor could receive between 85 and 90 percent of the total cost of an internal connections project by doing nothing more than shipping some equipment. That

is a contracting arrangement that no self-respecting business person would agree to, much less a conscientious public institution.

Further, E-rate applicants are required to certify that they have "complied with all applicable state and local laws regarding procurement of services for which support is being sought." Most government procurement regulations require that invoices must be reviewed before payments are made to ensure that the invoiced services and products were, indeed, provided. How can an applicant certify that it is in compliance with these rules when it lacks the most basic tools to ensure that a vendor has actually performed the work that is under contract? Although the SLD has improved this situation somewhat by issuing quarterly reports to applicants that detail what payments have been made on their behalf, by the time that report is received, the payment is already in the bank account of the vendor.

The simple solution to this problem is to require that Service Providers follow the same procedures that applicants are required to follow before their BEAR forms can be processed—namely, obtaining the signature of the other party, or in this case, their vendor. Through this requirement for BEAR forms, USAC receives a confirmation that the applicant did, in fact, pay the bills in question. And over the years of the program, many vendors have begun reviewing these more closely before signing them.

Requiring an applicant to sign a Service Provider Invoice before it is processed would achieve two important goals: First, it would provide a check against vendor errors, whether fraudulent or simply unintentional. This step would also help the Commission distinguish honest errors from criminal behavior when deciding when it should impose sanctions.

Second, the signature requirement would ensure that the applicant had actually agreed to receive its discounts through discounted invoices. We agree with the proposal, raised elsewhere in the NPRM, which would permit applicants to choose the payment method that suits their needs, whether it is a discounted invoice or a BEAR payment.

Requiring an applicant signature on the Service Provider Invoice would provide an easy way to ensure that the applicant had, in fact, chosen that payment method. We believe that standard business procedures can, in many cases, provide an appropriate check against waste, fraud and abuse in the program, if program rules would mirror them as closely as possible.

We know that in certain cases, the district has been asked to sign a certification that a service was provided before USAC would process the payment. We understand that in a March 13, 2002, conference call with the vendor community, an SLD staff member acknowledged that this procedure had turned up instances of apparent fraud and abuse in the program. Thus, we know of no good reason why this procedure should not be implemented program-wide as a sensible check against waste and fraud. Further, we suspect that most vendors would prefer to obtain this certification before they submit an invoice, rather than delay the processing of the invoice in midstream after USAC decides—for whatever reason—that this certification must be retrieved from an applicant.

The School District of Philadelphia purchases a substantial volume of products from a vendor that, according to USAC reports, has received more than $100 million in discounts since the E-rate program began. The E-rate accounting work of this company is managed primarily by a single person, and over time, errors inevitably have occurred in the invoices that the company submitted to the SLD. In some cases, invoices have been filed against the wrong Funding Request Number, and then when the district wanted to purchase additional products against that approved funding commitment later in the year, it found that there was no money left. This required everyone—including USAC—to waste valuable time, sorting out the confusion and re-filing forms so that the discounts could be correctly applied.

In another case, the same vendor, in effect, double-billed a single funding commitment for the same services. Billing problems such as these have been exacerbated because the district has been forced to simultaneously manage funding commitments

approved for several different funding years—because of successful appeals as well as the extension of the installation deadline for three additional months.

We believe that all of these billing errors involved honest mistakes on the part of the vendor. Nevertheless, they continue to cause major administrative problems for the school district. Further, when the school district was subjected to a beneficiary audit in the summer of 2001, it was the school district that was expected to be able to match up the invoices with the correct funding commitments—*even though the school district had played no role in the submission of the actual invoices and had no way to correct them if they were incorrect.*

The "automatic trigger" that is implicit in the Service Provider Invoice payment method creates the potential for additional problems. Since the start of the E-rate program, representatives of large urban school districts have urged the program's administrators to put in place processes that would mirror the progress payments through which school districts (and businesses) typically manage their networking projects. Under these sorts of arrangements, a networking job is divided into phases, and a vendor is paid only upon the successful completion of each phase.

Under the current E-rate rules, the only way an applicant can control the quality of work and the pace of payment is by electing to pay the total cost of the project itself and then seeking reimbursement through the BEAR process. And indeed, many applicants do just that. However, this is not an option for many financially strapped school districts. Once they file a Form 486 for an internal connections project, they have no choice but to keep their fingers crossed that their vendor will, in fact, provide the contracted level of service at the agreed-upon cost, since approximately 90 percent of the payment is beyond their control.

Some program stakeholders may oppose a requirement that applicants pre-approve invoices for fear that it would hinder electronic invoicing and the online filing of Service Provider Invoices. We believe electronic invoicing is used primarily by large-

volume telecommunications companies with a recurring billing cycle. In these cases, applicant approval could simply be required at the start of a funding year to ensure that the discounts would be provided to the appropriate accounts and in the appropriate amounts. In the case of online filing, we believe this could easily be addressed by offering the same kind of online certification that was recently implemented for the Form 470 and 471 applications. Vendors could simply ask their customers to certify that the submission was prepared correctly, either through an online certification or through submission, by fax, of a signature page, before a payment is disbursed.

We believe that this is the most important of a number of simple changes the Commission could make to create—and support—appropriate checks and balances between vendors and applicants over payments controlled by a third party, namely the fund administrator. As noted before, we fully support the Commission's proposal that would require service providers to offer applicants a choice of payment methods. We also support the implementation of a reasonable deadline for remittance of BEAR payments to the applicant, and sanctions against those vendors that do not remit these payments. (We believe that this problem could be addressed by permitting BEAR payments to be distributed directly to applicants, but the Commission may believe that under the law, it cannot implement such a change.)

Most of all, we support requiring that applicants review and sign Service Provider Invoices before they can be processed—the same standard that is applied to BEAR forms. We believe that enabling applicants to apply a standard business review before payments are made on their behalf would provide a low-cost, low-burden way of helping to protect the schools and libraries program from waste, fraud and abuse.

Respectfully submitted,

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